UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

LONG BEACH GRANDELL REHABILITATION AND NURSING CENTER, INC. and TERRIFIC MANAGEMENT, INC.[1]

Joint Employers

and

LOCAL 1118, NEW YORK STATE NURSING HOME AND HEALTH CARE EMPLOYEES UNION, NATIONAL ORGANIZATION OF INDUSTRIAL TRADE UNIONS

Case No. 29-RC-9279

Petitioner

and

LOCAL 1115-LONG ISLAND, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Intervenor[2]

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before

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[1] The Petitioner initially filed petitions in Case Nos. 29-RC-9272 and 29-RC-9273 seeking an election in the same unit that it seeks to represent in the instant matter. A hearing concerning those petitions opened on June 11, 1999. The Petitioner subsequently withdrew those petitions and refiled the instant petition. Administrative notice is taken of the record in Case Nos. 29-RC-9272 and 29-RC-9273. During the hearing in the instant matter, it was revealed that Terrific Management, Inc., herein called Terrific, is an employer of the housekeeping and laundry employees employed at the Long Beach Grandell facility described above. Following the adjournment of the hearing, it was notified of these proceedings, and it, along with the other parties entered into a written stipulation concerning commerce, the joint employer status of Terrific and Grandel (the Employers), the labor organization status of the Intervenor, the history of collective bargaining involving the petitioned-for unit of employees, and the appropriateness of the unit. By Order dated June 28, 1999, the Hearing Officer received said stipulation as Board Exhibit 4 and closed the record. The names of the Employers appear as amended at the hearing.

[2] The Intervenor intervened on the basis of its collective bargaining agreement with the Employers.

James Kearns, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned:

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.[3]

2. The parties stipulated that Grandell Rehabilitation Center, Inc., herein called Grandell, is a New York corporation with an office and place of business located at 645 West Broadway, Long Beach, New York, where it is engaged in the operation of a rehabilitation and nursing center. During the past 12 months, which period is representative of its operations generally, Grandell

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[3] During the hearing, the Intervenor sought to elicit testimony concerning misrepresentations allegedly made by agents of the Petitioner regarding the purpose of the authorization cards it solicited in support of its petition. The Intervenor also attempted to question the Petitioner's President, Steve Maritas, as to whether a particular employee had executed a card. The Hearing Officer refused to allow any testimony concerning the Petitioner's showing of interest. I find the Hearing Officer's ruling appropriate. Because the public disclosure of information concerning a union's showing of interest would have a chilling effect on the Section 7 rights of employees, the Board does not normally permit the litigation of such matters in representation hearings. G.R.D.G., Inc. A.M.& N., Inc. d/b/a Crystal Art Gallery, 323 NLRB 258 (1997); S.H. Kress & Co., 137 NLRB 1244, 1248-1249 (1962). When a party alleges that a union has obtained its showing of interest by unlawful means, it is given the opportunity to present evidence of such conduct administratively. Waste Management of New York, 323 NLRB 590 (1997). In the instant matter, I note that following the close of the hearing, the Intervenor filed a charge against the Petitioner in Case No. 29-CB-10912 alleging that it had restrained and coerced employees in the course of soliciting its showing of interest. Because the charge was filed after both the filing of the petition and the close of the hearing, the continued processing of the petition is appropriate. However, I will postpone any decision concerning the scheduling of an election until the investigation of the aforementioned charge has been completed.

During Maritas' testimony, the Employer sought to question him concerning his prior history with "Local 1191", an organization that the Employer contended existed for the purpose of "trying to exploit money from employers." In the absence of a prior finding by the Board that Maritas has been barred from forming or participating in other labor organizations, the Hearing Officer refused to allow such testimony. The Board will not deny employees the right to select a representative because of the past history, however unsavory, of certain individuals associated with the labor organization seeking to represent them. Alto Plastics Mfg. Corp., 136 NLRB 850, 851-852 (1962). Since an extensive examination of the president's past would have unnecessarily prolonged the hearing and would not have impacted upon the Petitioner's status as a labor organization, I find that the Hearing Officer acted properly in refusing to permit such testimony.

has derived gross revenues in excess of $100,000 and purchased and received goods valued in excess of $5,000 at its Long Beach, New York facility directly from points located outside the State of New York.

The parties further stipulated that Terrific Management, Inc., herein called Terrific, is a New York corporation with a place of business located at 645 West Broadway, Long Beach, New York, where it is engaged in providing employees to, and managing employees of, Grandell. During the past 12 months, which period is representative of Terrific's operations generally, Terrific has provided services valued in excess of $50,000 to Grandell.

The record shows that on February 4, 1997, Grandell and the Intervenor entered into an agreement granting Grandell permission to "subcontract out" its laundry and housekeeping work to Terrific. This permission was granted on the condition that Terrific hire all of Grandell's housekeeping and laundry employees and apply the Intervenor's collective bargaining agreement with Grandell to these employees. It appears that this has occurred and that Grandell, Terrific (herein jointly called the Employers) and the Intervenor have treated the housekeeping and laundry employees and the remaining employees covered by the Intervenor's contract with Grandell as one bargaining unit.

Based upon the above, and the control that the Employers jointly exercise over the terms and conditions of employment of the housekeeping and laundry employees within the bargaining unit, the parties stipulated that the Employers are joint employers as that term is defined by the Board.

Based on the stipulation of the parties, and the record as a whole, I find that the Employers, and each of them, are engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein. I further find that the Employers are joint employers as that term is defined by the Board.

3. The parties stipulated that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act. However, the Employer and the Intervenor refused to stipulate to the labor organization status of the Petitioner.

Steve Maritas, the president of the Petitioner, testified that he and at least three other individuals, all of whom currently serve on the Petitioner's Executive Board, formed the Petitioner in January 1998. Prior to its affiliation with National Organization of Industrial Trade Unions (NOITU), the Petitioner was a member of the National Health Care Trades International Union (NHCTIU). However, inasmuch as the Petitioner and NHCTIU shared the same officers and address, and the Petitioner was apparently the NHCTIU's only member, it appears that the two organizations were synonymous. On April 19, 1999, the Petitioner disaffiliated itself from the NHCTIU and became a member of NOITU. I note that in several prior cases NOITU has been found to be a Section 2(5) labor organization.[4]

The Petitioner currently represents a unit of approximately 70 service and maintenance employees employed at Rome Nursing Home in Rome, New York. Rome's recognition of the Petitioner has been embodied in a collective bargaining agreement that is effective from April 15, 1998, through April 14, 2001. This contract contains a grievance-arbitration procedure and various other provisions concerning wages, hours and benefits. Maritas testified that a committee of Rome's employees participated in the negotiations that resulted in its execution. In addition, employees in the bargaining unit at Rome have elected three shop stewards.

Grievances are processed by both Maritas and the shop stewards. Maritas testified that none have been arbitrated, but asserted that when he

[4] Caro Bags, Inc., 285 NLRB 656 (1987); Jayar Metal Finishing Corp., 297 NLRB 603, 605 (1990); Hudson Neckwear, Inc., 302 NLRB 93 (1991); Hudson Neckwear, Inc., 306 NLRB 226 (1992).

threatened Rome with arbitration following its attempt to discharge a shop steward, the matter was settled. In addition to serving as stewards, bargaining unit employees serve on the Petitioner's Executive Board.

It is well established that to qualify as a labor organization under Section 2(5) of the Act, an entity must satisfy two criteria: 1) employees must participate in that organization; and 2) it must exist, in whole or in part, for the purpose of dealing with employers with respect to wages, hours and other terms and conditions of employment. Alto Plastics, supra. It is clear from the above that the Petitioner satisfies these criteria. Accordingly, I find it to be a labor organization within the meaning of the Act.[5]

The labor organizations involved herein claim to represent certain employees of the Employer.

4. Grandell contends that its collective bargaining agreement with the Intervenor is a bar. The record appears to show that prior to 1996, Grandell was a member of the Nassau County Health Facilities Association (the Association), an association of employers which existed, at least in part, for the purpose of representing its employer members in negotiations with the Intervenor. Grandell subsequently withdrew its membership in the Association, and on November 22, 1996, Grandell and the Intervenor executed a two page, untitled handwritten agreement. The agreement, much of which is difficult to read, *appears* to be effective from January 1, 1996, to December 31, 1999, with a

[5] Prior to the hearing, the Intervenor served a subpoena *duces tecum* on the Petitioner calling for the production of various documents including its constitution and bylaws and the financial disclosure forms it is required to file with the United States Department of Labor pursuant to the Labor-Management Reporting and Disclosure Act. It appears that the Petitioner produced some but not all the subpoenaed documents. As the Hearing Officer correctly pointed out, violations of the Labor Management Reporting and Disclosure Act do not result in the forfeiture of a labor organization's Section 2(5) status. Accordingly, and in view of my finding that the Petitioner qualifies as a Section 2(5) labor organization, I decline to enforce the remaining portions of the subpoena. Alto Plastics, supra.

reopener for the period commencing January 1, 1999.[6] It is not clear from the agreement whether the reopener is limited to certain economic matters or applies to the entire contract. The agreement provides that with certain modifications set forth therein, the contract between Association and the Intervenor will be applied. No signed contract between the Association and the Intervenor was submitted into evidence. Rather, during the first day of hearing the Intervenor submitted an unsigned fully integrated collective bargaining agreement between Grandell and the Intervenor. Grandell's counsel stated that this contract "appears to be the association agreement which somebody started to modify to take out the association terms, to make it a Grandell agreement."

The Intervenor and Grandell asserted that pursuant to the reopener they had commenced negotiations for either a new agreement or modifications to the existing contract. However, they conceded that these negotiations had not been concluded.

Assuming arguendo that the handwritten agreement submitted into evidence sufficiently sets forth wages and other terms of employment to stabilize the bargaining relationship, it is well established that a contract will not bar an election for more than three years past its effective date.[7] General Cable Corp., 139 NLRB 1123 (1962). Inasmuch as the agreement at issue went into effect on January 1, 1996, it ceased operating as a bar on January 1, 1999. Accordingly, I find that the contract does not bar an election and will continue to process the petition.[8]

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[6] The preamble appears to read, "Whereas the Union and the Employer met to negotiate a new collective bargaining Agreement for the period January 1, 1996 to December 31, 199_ with term (sic) for the period January 1, 1996 to December 31, 1998 and a reopener for the period commencing January 1, 1999." The concluding lines appear to read, :"Term January 1, 1996 to December 31, 1999, reopener **(**arbitration by mutual consent**)** January 1, 1999."

[7] If the January 1, 1999, reopener covers all the contract's terms, the contract in effect expired on that date and would not bar an election.

[8] In addition, I am not satisfied that the agreement submitted into evidence delineates terms and conditions of employment with sufficient clarity to stabilize the bargaining relationship.

A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the following unit is appropriate for the purposes of collective bargaining

> All full-time and regular part-time licensed practical nurses, certified nursing assistants, service and maintenance employees, housekeeping employees, laundry employees, receptionists, and dietary employees including assistant cooks and cooks, employed by Grandell Rehabilitation and Nursing Center, Inc., and Terrific Management, Inc., joint employers, at the facility located at 645 West Broadway, Long Beach, New York, excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the

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Appalachian Shale Products Co., 121 NLRB 1160 (1958). As earlier noted, the Association contract, which the handwritten agreement incorporates, was not submitted into evidence. Thus, it is not possible to determine from examining this agreement most of the contractual terms and conditions of employment . NLRB v. Arthur Sarnow Candy Co., Inc., 40 F3d 552, 147 LRRM 2583 (CA2) (1994).

designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether they desire to be represented for collective bargaining purposes by Local 1118, New York State Nursing Home and Health Care Employees Union, National Organization of Industrial Trade Unions, by Local 1115-Long Island, Service Employees International Union, AFL-CIO, or by neither labor organization.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employers with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before July 14, 1999. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement

shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employers at least three working days prior to an election. If the Employers have not received the notices of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employers to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by July 21, 1999.

Dated at Brooklyn, New York, this 7th day of July, 1999.

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Alvin Blyer
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National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201

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